

CITY OF NORTH MIAMI
PROFESSIONAL SERVICES AGREEMENT
(Fleet Management Services)

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into this ____ day of ^{7/7/2014}____, 2014 by and between the **City of North Miami**, a Florida municipal corporation, located at 776 NE 125th Street, North Miami, FL ("City") and **Fleet Counselor Services, Inc.**, a foreign for-profit corporation authorized to transact business under the laws of the State of Florida, having its principal business office at 1655 N. Sundial Street, Mesa, AZ 85205 ("Consultant"). The City and Consultant shall collectively be referred to as the "Parties", and each may individually be referred to as a "Party".

RECITALS

WHEREAS, the City is desirous of obtaining the labor, supervision, materials, equipment, tools, services and expertise necessary for the provision of vehicle and equipment replacement, utilization and privatization analysis, in accordance with the conditions, terms and specifications contained in the Contract Documents ("Services"); and

WHEREAS, in response to the City's Invitation to Quote, Consultant submitted its proposal which was evaluated by City administration as responsive, and whose price, qualifications and references were the most advantageous to the City; and

WHEREAS, the Consultant has expressed the capability, willingness and expertise to perform the Services pursuant to the Contract Documents; and

WHEREAS, the City Manager has determined that entering into this Agreement with Consultant for the provision of Services, is in the City's best interest.

NOW THEREFORE, in consideration of the mutual terms and conditions set forth herein and other good and valuable consideration, the Parties hereto agree as follows:

ARTICLE 1 - RECITALS

1.1 The recitals are true and correct and are hereby incorporated into and made a part of this Agreement.

ARTICLE 2 - CONTRACT DOCUMENTS

2.1 The following documents are incorporated into and made part of this Agreement (collectively referred to as the "Contract Documents"):

2.1.1 City's Invitation to Quote, attached hereto by reference;

2.1.2 Consultant's response to City's Invitation to Quote, attached hereto as "Exhibit A";

2.1.3 City's Quote Tabulation Sheet dated May 28, 2014, identifying criteria used by City administration for the selection of Consultant, attached hereto as "Exhibit B";

2.1.4 Any additional documents which are required to be submitted by Consultant pursuant to this Agreement and Contract Documents.

2.2 In the event of any conflict between the Contract Documents or any ambiguity or missing specification or instruction, the following priority is hereby established:

2.2.1 Specific written direction from the Interim City Manager or Interim City Manager's designee.

2.2.2 This Agreement.

2.3 The Parties agree that Consultant is responsible for clarifying any ambiguity, conflict, discrepancy, omission, or other error prior to Consultant submitting its Proposal or the right to clarify same shall be waived.

ARTICLE 3 - TIME FOR PERFORMANCE

3.1 The Time for Performance shall not exceed Ninety (90) calendar days from the execution of this Agreement, excluding City observed holidays and weekends. The Consultant agrees that the performance of Services shall be pursued on schedule, diligently and uninterrupted at a rate of progress which will ensure full completion within the agreed Time for Performance. Failure to achieve timely final completion within the time provided shall be regarded as a material breach of this Agreement and subject to the appropriate remedies available at law.

3.2 When, in the opinion of the City, reasonable grounds for uncertainty exist with respect to the Consultant's ability to perform Services or any portion thereof, the City may request that the Consultant, within a reasonable time frame set forth in the City's request, provide adequate assurances to the City in writing, of Consultant's ability to perform in accordance with terms of this Agreement. In the event that the Consultant fails to provide the City the requested assurances within the prescribed time frame, the City may treat such failure as a repudiation or breach of this Agreement, and resort to any remedy for breach provided for in this Agreement or at law.

ARTICLE 4 - COMPENSATION

4.1 The Consultant shall be paid an amount not to exceed Forty Nine Thousand Nine Hundred Dollars (\$49,900.00) as full compensation for the completion of Services. Funding for this Agreement is contingent on the availability of funds and the Agreement is subject to amendment or termination due to lack of funds or a reduction of funds, upon ten (10) days written notice to Consultant.

4.2 The City shall pay Consultant within thirty (30) days of receipt of invoice the total shown to be due on such invoice, provided the City has accepted the Services.

ARTICLE 5 - CONSULTANT'S RESPONSIBILITIES

5.1 As an inducement for the City to enter into this Agreement, Consultant has represented an expertise in the provision of Services of similar public projects. In reliance upon those representations, the City has entered into this Agreement with Consultant for the provision of Services.

5.2 Consultant shall supervise and direct the work competently and efficiently, devoting such attention and applying Consultant's best skill, attention and expertise. Consultant shall be solely responsible for and have control over the means, methods, techniques, sequences and procedures of the work and shall ensure that the finished Services accurately comply with the Contract Documents.

5.3 When necessary, Consultant shall provide and pay for competent, suitably qualified personnel to perform portions of the Services as required by the Contract Documents. Consultant shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

5.4 Consultant shall furnish, pay for and assume full responsibility for all materials, equipment, transportation, machinery, tools and all other facilities and services necessary for the performance and proper completion of Services.

5.5 Consultant warrants that any and all work, materials, services or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result, will be supplied by the Consultant at its own cost, whether or not specifically called for.

ARTICLE 6 - SCOPE OF SERVICES

6.1 The general sequence of the work shall be submitted by the Consultant and approved by the City before any work commences. The City reserves the right to issue directives as necessary to facilitate the flow of work or to minimize any conflict with public operations.

6.2 The Consultant shall provide all required labor, supervision, materials, equipment, tools, services and expertise necessary for the completion of Services, under the terms, conditions and specifications contained in the Contract Documents. Consultant shall perform the Services in accordance with that degree of care and skill ordinarily exercised by reputable members of its profession.

6.3 Consultant represents and warrants to the City that: (i) Consultant possesses all qualifications, licenses and expertise required for the provision of Services, with personnel fully licensed by the State of Florida; (ii) Consultant is not delinquent in the payment of any sums due the City, including payment of permit fees, local business taxes, or in the performance of any obligations to the City; (iii) all personnel assigned to perform work shall be, at all times during the term hereof, fully qualified and trained to perform the tasks assigned to each; (iv) the Services will be performed in the manner and at such times and locations as described by the City for the budgeted amount; and (v) the person executing this Agreement on behalf of Consultant is duly authorized to execute same and fully bind Consultant as a party to this Agreement.

6.4 Consultant agrees and understands that: (i) any and all Subcontractors used by Consultant shall be paid by Consultant and not paid directly by the City; and (ii) any and all liabilities regarding payment to or use of Subcontractors for any of the work related to this Agreement shall be borne solely by Consultant.

6.5 Consultant shall be responsible for technically deficient information, plans, reports, or studies due to Consultant's errors and omissions, and shall promptly correct or replace all such deficient work without cost to City. The Consultant shall also be responsible for all damages resulting from such errors and omissions. Payment in full by the City for Services performed does not constitute a waiver of this representation.

6.6 Services shall be completed by the Consultant to the satisfaction of the City. The City shall make decisions on all claims regarding interpretation of the Agreement and on all other matters relating to the execution, progress and quality of the Services.

ARTICLE 7 - INDEPENDENT CONSULTANT

7.1 Consultant has been procured and is being engaged by the City as an independent contractor, and not as an agent or employee of the City. Accordingly, Consultant shall not attain, nor be entitled to, any rights or benefits under the Civil Service or Pension Ordinances of the City, nor any rights generally afforded classified or unclassified employees of the City. Consultant further understands that Florida workers' compensation benefits available to employees of the City, are not available to Consultant. Therefore, Consultant agrees to provide workers' compensation insurance for any employee or agent of Consultant rendering services to the City under this Agreement.

ARTICLE 8 - CONFLICTS OF INTEREST

8.1 Consultant represents and warrants to the City that it has not employed or retained any person or company employed by the City to solicit or secure this Agreement and that it has not offered to pay, paid, or agreed to pay any person any fee, commission, percentage, brokerage fee, or gift of any kind contingent upon or in connection with, the award of this Agreement.

8.2 Consultant covenants that no person under its employ who presently exercises any functions or responsibilities on behalf of the City in connection with this Agreement has any personal financial interest, directly or indirectly, with the Consultant or Subcontractors, except as fully disclosed and approved by the City. Consultant further covenants that, in the performance of this Agreement, no person having such conflicting interest shall be employed.

ARTICLE 9 - DEFAULT

9.1 If Consultant fails to comply with any term or condition of this Agreement, or fails to perform any of its obligations hereunder, then Consultant shall be in default. The City shall have the right to terminate this Agreement, in the event Consultant fails to cure a default within five (5) business days after receiving Notice of Default. Consultant understands and agrees that termination of this Agreement under this section shall not release Consultant from any obligations accruing prior to the effective date of termination.

ARTICLE 10 - CITY'S TERMINATION RIGHTS

10.1 The City shall have the right to terminate this Agreement, in its sole discretion at any time, with or without cause, upon ten (10) days written notice to Consultant. In such event, the City shall pay Consultant compensation for Services rendered prior to the effective date of

termination. The City shall not be liable to Consultant for any additional compensation, or for any consequential or incidental damages.

ARTICLE 11 - NOTICES

11.1 All notices, demands, correspondence and communications between the City and Consultant shall be deemed sufficiently given under the terms of this Agreement when dispatched by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

To Consultant: Fleet Counselor Services, Inc.
Attn: Jim Wright
1655 N. Sundial Street
Meza, AZ 85205
Phone: (480)396-3636
Fax: (____) ____-____
Email: jwright@doitnow.com

To City: City of North Miami
Attn: City Manager
776 N.E. 125th Street
North Miami, Florida 33161

With a copy to: City Attorney
City of North Miami
776 N.E. 125th Street
North Miami, Florida 33161

11.2 Either Party may at any time designate a different address and/or contact person by giving notice as provided above to the other Party. Such notices shall be deemed given upon receipt by the addressee.

11.3 In the event there is a change of address and the moving Party fails to provide notice to the other Party, then notice sent as provided in this Article shall constitute adequate notice.

ARTICLE 12 - INDEMNIFICATION

12.1 Execution of this Agreement by Consultant is a representation that Consultant has visited the work site and is familiar with the local conditions under which the Services is to be performed, and relieves the City from any liability in regard to any matter not immediately brought to the attention of the City.

12.2 Consultant shall defend, indemnify and hold harmless the City, its officers and employees from and against any and all claims, costs, losses and damages including, but not limited to reasonable attorney's fees, caused by the negligent acts or omissions of the Consultant, its officers, directors, agents, partners, Subcontractors, employees and managers in the performance of the Services under this Agreement.

12.3 Nothing contained in this Agreement is any way intended to be a waiver of the limitation placed upon the City's liability as set forth in Chapter 768, Florida Statutes. Additionally, the

City does not waive sovereign immunity, and no claim or award against the City shall include attorney's fees, investigative costs or pre-judgment interest.

ARTICLE 13 – INSURANCE

13.1 Prior to the execution of this Agreement, the Consultant shall submit certificate(s) of insurance evidencing any required coverage and specifically providing that the City is an additional named insured. Consultant shall not commence Services under this Agreement until after Consultant has obtained all of the minimum insurance requested by the City, and the policies of such insurance detailing the provisions of coverage have been received and approved by the City. Consultant shall not permit any Subcontractor to begin work until after similar minimum insurance to cover Subcontractor has been obtained and approved. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the term of this Agreement, Consultant shall furnish, at least thirty (30) calendar days prior to expiration of the date of the insurance, a renewed certificate of insurance as proof that equal and like coverage and extension is in effect.

13.2 All insurance policies required of the Consultant shall be written by a company with a Best's rating of B+ or better and duly authorized and licensed to do business in the State of Florida and be executed by duly licensed managers upon whom service of process may be made in Miami-Dade County, Florida.

13.3 A payment and performance bond in the amount of 100% of the compensation amount of this Agreement shall be required by the Consultant prior to the commencement of Services. The payment bond shall secure and guarantee payment of all persons performing labor or providing materials for the Services rendered under this Agreement. The performance bond shall secure and guarantee Consultant's faithful performance of this Agreement, including but not limited to Consultant's obligation to correct defects after final payment has been made as required by the Contract Documents.

ARTICLE 14 - FORCE MAJEURE

14.1 A "Force Majeure Event" shall mean an act of God, act of governmental body or military authority, fire, explosion, power failure, flood, storm, hurricane, sink hole, other natural disasters, epidemic, riot or civil disturbance, war or terrorism, sabotage, insurrection, blockade, or embargo. In the event that either Party is delayed in the performance of any act or obligation pursuant to or required by the Agreement by reason of a Force Majeure Event, the time for required completion of such act or obligation shall be extended by the number of days equal to the total number of days, if any, that such Party is actually delayed by such Force Majeure Event. The Party seeking delay in performance shall give notice to the other Party specifying the anticipated duration of the delay, and if such delay shall extend beyond the duration specified in such notice, additional notice shall be repeated no less than monthly so long as such delay due to a Force Majeure Event continues. Any Party seeking delay in performance due to a Force Majeure Event shall use its best efforts to rectify any condition causing such delay and shall cooperate with the other Party to overcome any delay that has resulted.

ARTICLE 15 - PUBLIC RECORDS

15.1 Consultant understands that the public shall have access, at all reasonable times, to all documents and information pertaining to City contracts, subject to the provisions of Chapter 119,

Florida Statutes, and agrees to allow access by the City and the public to all documents subject to disclosure under applicable law.

15.2 Consultant shall additionally comply with Section 119.0701, Florida Statutes, including without limitation, the following conditions: (1) keep and maintain public records that ordinarily and necessarily would be required by the City to perform this service; (2) provide the public with access to public records on the same terms and conditions as the City would at the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law; (3) ensure that public records that are exempt or confidential and exempt from disclosure are not disclosed, except as authorized by law; (4) meet all requirements for retaining public records and transfer, at no cost to the City, all public records in its possession upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from disclosure requirements; and (5) all electronically stored public records must be provided to the City in a format compatible with the City's information technology systems.

ARTICLE 16 - MISCELLANEOUS PROVISIONS

16.1 No waiver or breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.

16.2 All representations, indemnifications, warranties and guarantees made in, required by, or given in accordance with this Agreement, as well as all continuing obligations indicated in the Contract Documents, shall survive final payment, completion and acceptance of the Services and termination or completion of the Agreement.

16.3 Should any provision, paragraph, sentence, word or phrase contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Florida, such provision, paragraph, sentence, word or phrase shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable, then same shall be deemed severable, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect or limitation of its use.

16.4 This Agreement constitutes the sole and entire agreement between the Parties. No modification or amendments to this Agreement shall be binding on either Party unless in writing and signed by both Parties.

16.5 This Agreement shall be construed and enforced according to the laws of the State of Florida. Venue in any proceedings between the Parties shall be in Miami-Dade County, Florida.

16.6 The City reserves the right to audit the records of the Consultant covered by this Agreement at any time during the provision of Services and for a period of three years after final payment is made under this Agreement.

16.7 The Consultant agrees to comply with and observe all applicable federal, state, and local laws, rules, regulations, codes and ordinances, as they may be amended from time to time.

16.8 Services shall not be subcontracted, transferred, conveyed, or assigned under this Agreement in whole or in part to any other person, firm or corporation without the prior written consent of the City.

16.9 The City of North Miami is exempt from Federal Excise and State taxes. The applicable tax exemption number or certificate shall be made available upon request.

16.10 The professional Services to be provided by Consultant pursuant to this Agreement shall be non-exclusive, and nothing herein shall preclude the City from engaging other firms to perform Services.

16.11 This Agreement shall be binding upon the Parties herein, their heirs, executors, legal representatives, successors and assigns.

16.12 The Consultant agrees that it shall not discriminate as to race, sex, color, creed, national origin, or disability, in connection with its performance under this Agreement.

16.13 In the event of any dispute arising under or related to this Agreement, the prevailing party shall be entitled to recover all actual attorney fees, costs and expenses incurred by it in connection with that dispute and/or the enforcement of this Agreement, including all such actual attorney fees, costs and expenses at all judicial levels, including appeal, until such dispute is resolved with finality.

16.14 All other terms, conditions and requirements contained in the Contract Documents, which have not been modified by this Agreement, shall remain in full force and effect.

16.15 This Agreement may be executed in two or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute one and the same Agreement.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the Parties have executed this Agreement by their respective proper officers duly authorized the day and year first written above.

ATTEST:

Corporate Secretary or Witness:

By: _____

Print Name: _____

Title: _____

Date: _____

Fleet Counselor Services, Inc., a foreign for-profit corporation:
“**Consultant**”

DocuSigned by:
By: Jim Wright
D2FA2327E3D74DF...

Print Name: _____

Title: President

Date: 7/7/2014

ATTEST:

DocuSigned by:
By: Michael A. Etienne
2C7010872EE8414...
Michael A. Etienne
City Clerk

City of North Miami, a Florida municipal Corporation: “**City**”

DocuSigned by:
By: Aleem Ghany
AD8G42C3AFAE41B...
Aleem A. Ghany
City Manager

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

DocuSigned by:
By: Regine Monestime
97878B01BC7F413...
Regine M. Monestime
City Attorney